

*City of Las Vegas*

**AGENDA MEMO**

**PLANNING COMMISSION MEETING DATE: OCTOBER 11, 2007**

**DEPARTMENT: PLANNING AND DEVELOPMENT**

**ITEM DESCRIPTION: ABEYANCE - VAR-23108 - APPLICANT: DRAKE REAL ESTATE SERVICES - OWNER: CAP II-FARM/DURANGO, LLC**

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**\*\* CONDITIONS \*\***

**STAFF RECOMMENDATION: DENIAL.** If Approved, subject to:

**Planning and Development**

1. Conformance to the conditions for Special Use Permit (SUP-23111) and Site Development Plan Review (SDR-23107), and Variance (VAR-23109) if approved.
2. This approval shall be void two years from the date of final approval, unless a certificate of occupancy has been issued or upon approval of a final inspection. An Extension of Time may be filed for consideration by the City of Las Vegas.

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**\*\* STAFF REPORT \*\***

**PROJECT DESCRIPTION**

The project is a request for a Variance to allow a 20-foot Residential Adjacency Setback where 87 feet is the minimum required for a proposed 14,028 square foot General Retail store on 3.21 acres adjacent to the west side of El Capitan Way approximately 260 feet north of Durango Drive.

The bulk and scale and reduced setback are considered unacceptable and uncomplimentary with adjacent residential uses. Staff recommendation is denial.

**BACKGROUND INFORMATION**

<i>Related Relevant City Actions by P&amp;D, Fire, Bldg., etc.</i>	
12/07/98	The City Council approved the rezoning of the Town Center plan area (Z-0076-98) including this parcel. The Planning Commission recommended approval.
11/07/01	The City Council approved the current version Town Center Development Standards (TCDS) Manual through Bill No. 2001-100. The TCDS details the uses permitted within Town Center and the development standards that will accomplish the vision of Town Center.
10/23/03	The Planning Commission abeyed, SDR #3191, the original site plan to its 12/04/03 meeting in order to include the full commercial development site in the application. This request was noticed to include the full site in the application.
01/07/04	The City Council approved Site Development Plan Review (SDR-3191) and a Waiver of Town Center Build-to-Line standards for a 29,120 square feet of retail space on five pad sites. Planning Commission and Staff recommended denial on 12/04/03.
01/22/04	The Planning Commission approved a Tentative Map (TMP-3272) for a two-lot commercial subdivision on 4.91 acres. Staff recommended approval.
12/03/04	Planning Staff administratively approved a Minor Amendment to an approved Site Development Plan Review (SDR-3191) to allow minor changes of building footprints and to allow 29,315 square feet of retail space on four pad sites.
01/13/05	The Planning Commission denied a Special Use Permit (SUP-5684) and a Site Development Plan Review (SDR-5681) for a proposed Restaurant with Drive-through. Staff had recommended approval.
01/27/05	The Planning Commission accepted the applicant's request to Withdraw Without Prejudice Special Use Permit (SUP-5740) for a proposed Liquor Establishment (Tavern). Staff had recommended denial.

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03/21/05	Planning Staff administratively approved a minor amendment to an approved Site Development Plan Review (SDR-3191) to allow minor changes of building footprints and to allow 28,315 square feet of retail space on three pad sites.
08/23/07	The Planning Commission held the following items in abeyance until 9/27/07 in order to allow the applicant to meet with surrounding property owners: VAR-23108, VAR-23109, SUP-23111 and SDR-23107.
09/27/07	The Planning Commission held the following items in abeyance until 10/11/07 in order to allow staff to review revised plans: VAR-23108, VAR-23109, SUP-23111 and SDR-23107.
<b><i>Related Building Permits/Business Licenses</i></b>	
NA	
<b><i>Pre-Application Meeting</i></b>	
05/31/07	A Pre-Application meeting was held where Planning staff advised the applicant of Town Center Development Standards and Title 19.08 Commercial Development standards, landscape and parking requirements, and residential adjacency requirements.
<b><i>Neighborhood Meeting</i></b>	
07/31/07	<p>A Neighborhood Meeting was held and was attended by eight members of the public, two city staff representatives from Planning and Development and Council Ward 6, and two representatives of the applicant. Community members voiced the following concerns:</p> <ul style="list-style-type: none"> <li>• Hours of operation</li> <li>• Delivery schedule</li> <li>• Project lighting, landscaping, building height, and traffic circulation</li> <li>• Building setback from the residential property line</li> <li>• Signage</li> <li>• Building materials</li> <li>• Fencing</li> <li>• Liquor sales</li> <li>• Requested Variances and Waivers</li> <li>• Number of employees</li> </ul>
<b><i>Field Check</i></b>	
07/16/07	A site visit was conducted and the project location is a partially developed lot located adjacent to existing commercial and residential development with access from El Capitan Way.

<b><i>Details of Application Request</i></b>	
<b><i>Site Area</i></b>	
Gross Acres	3.21 acres
Net Acres	1.72 acres

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<b>Surrounding Property</b>	<b>Existing Land Use</b>	<b>Planned Land Use</b>	<b>Existing Zoning</b>
Subject Property	Partially developed with asphalt driveway and Commercial Retail Building	SC- TC (Service Commercial Town Center) Special Land Use Designation	T-C (Town Center)
North	Single-family Residential	R-CL (Single Family Residential Compact Lot)	PCD (Planned Community Development)
South	Vacant land	SC- TC (Service Commercial Town Center) Special Land Use Designation	T-C (Town Center)
East	Existing Commercial Building	SC- TC (Service Commercial Town Center) Special Land Use Designation	T-C (Town Center)
West	Vacant land	SC- TC (Service Commercial Town Center) Special Land Use Designation	T-C (Town Center)

<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Area Plan</b>			
T-C Town Center District	X		Y
<b><i>Special Districts/Zones</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>	<b><i>Compliance</i></b>
<b>Special Purpose and Overlay Districts</b>			
T-C Town Center District	X		Y
<b>Trails</b>		X	NA
<b>Rural Preservation Overlay District</b>		X	NA
<b>Development Impact Notification Assessment</b>		X	NA
<b>Project of Regional Significance</b>		X	NA

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**DEVELOPMENT STANDARDS**

*Pursuant to Title 19.08, the following Commercial Development standards apply:*

<b>Standard</b>	<b>Required/Allowed</b>	<b>Provided</b>	<b>Compliance</b>
Min. Lot Size	NA	NA	NA
Min. Lot Width	NA	NA	NA
Min. Setbacks			
• Front	15 feet	60 feet	Y
• Side	10 feet	8 feet	Y
• Corner	NA	NA	NA
• Rear	20 feet	38 feet	Y
Min. Distance Between Buildings	NA	NA	NA
Max. Lot Coverage	NA	NA	NA
Max. Building Height	NA	NA	NA
Trash Enclosure	50 feet	90 feet	Y
Mech. Equipment	Screened	Screened	Y

*In accordance with Title 19.08, the following Residential Adjacency Standards apply:*

<b>Residential Adjacency Standards</b>	<b>Required/Allowed</b>	<b>Provided</b>	<b>Compliance</b>
3:1 proximity slope	87 feet	50 feet	N
Adjacent development matching setback	28	50 feet	Y
Trash Enclosure	50 feet	90 feet	Y

**ANALYSIS**

The project site elevation ranges between four feet and seven feet greater than the pad elevation of existing developed residential lots north of the subject parcel. In accordance with Title 19.08 – Residential Adjacency Standards (RAS), a Proximity Slope Analysis was prepared and determined the structure will not fall below the required 3:1 slope as the proposed building setback will be 20 feet from the residential property line. The proposed height of the commercial structure will be 29 feet tall and as mandated by the RAS, is required to be setback 87 feet from the residential property line. An eight foot tall wall is proposed along the residential property line; however, the north elevation of the proposed commercial structure does not feature any architectural elements (such as building stepbacks or other design components) that could reduce the potential visual effects that may result with the project. The project bulk and scale combined with reduced building setback is considered excessive and incompatible with adjacent single family development.

**FINDINGS**

In accordance with the provisions of Title 19.18.070(B), Planning Commission and City Council, in considering the merits of a Variance request, shall not grant a Variance in order to:

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1. Permit a use in a zoning district in which the use is not allowed;
2. Vary any minimum spacing requirement between uses;
3. Relieve a hardship which is solely personal, self-created or financial in nature.”

Additionally, Title 19.18.070L states:

“Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution.”

No evidence of a unique or extraordinary circumstance has been presented in that the applicant has created a self-imposed hardship by choosing a building footprint adjacent to existing single family residences and proposing a building height that will not conform with Title 19.08 Residential Adjacency Standards. An alternative that reduces the bulk and scale and/or square footage of the structure and proposes a project footprint further away from the residential property line could allow conformance to the Title 19.08 requirements. In view of the absence of any hardships imposed by the site’s physical characteristics, it is concluded that the applicant’s hardship is preferential in nature, and it is thereby outside the realm of NRS Chapter 278 for granting of Variances.

**NEIGHBORHOOD ASSOCIATIONS NOTIFIED** 10

**ASSEMBLY DISTRICT** 13

**SENATE DISTRICT** 9

**NOTICES MAILED** 716

**APPROVALS** 4

**PROTESTS** 11